DOCUMENT RESUME

ED 445 606 HE 033 242

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TITLE	Application of Preventative Legal Considerations to the Alumni Affairs Administrator.
PUB DATE	2000-00-00
NOTE	15p.
PUB TYPE	Opinion Papers (120)
EDRS PRICE	MF01/PC01 Plus Postage.
DESCRIPTORS	Accountability; *Administrators; Alumni Associations; Compliance (Legal); Donors; Educational Finance; *Fund Raising; Higher Education; *Institutional Advancement; Laws; *Legal Problems; *Legal Responsibility; *Private Financial Support; Public Relations; Risk Management
IDENTIFIERS	*Americans with Disabilities Act 1990

ABSTRACT

Colleges and universities increasingly rely on fund raising activities as a major source of operating revenue, a process which is wrought with legal pitfalls. This document provides an overview of the legal considerations of fund raising for the alumni and development officer, focusing particularly on span of control considerations between alumni affairs and fund-raising officers and on the use of volunteers. The discussion examines the changing role of alumni affairs administrators; the process of raising money; the role of fund-raising professionals; endowments; and the increasing competition for philanthropic dollars. Also noted are the legal considerations related to such fund-raising activities, including contract law, the law of agency, compliance with the Americans with Disabilities Act, due process, and harassment. The paper cautions institutions on the attendant legal liabilities they must be cognizant of when alumni and others go about institutional advancement activities. (CH)

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ED 445 606

Application of Preventative Legal Considerations to the Alumni Affairs Administrator

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Abstract

Colleges and universities have come to increasingly rely on fund raising activities as a major source of operating revenue. Often described as providing the "margin of excellence," fund raising programs are predicated and revolve around a system of cultivation, responding to interests, and providing an opportunity for the constituent to materialize support in the form of a gift. This process can be wrought with legal pitfalls, however, that can place the institution or association in jeopardy. A thorough understanding of these legal dimensions to working with volunteers and soliciting support is needed, and this preliminary step provides an initial discussion of the legal parameters that can impact alumni association management and college fund raising.

Colleges and universities have undergone substantial operational changes within the past 30 years. Due in large part to the influx of non-traditional students, profit centers, and revenue generating activities, public higher education has begun to increasingly resemble private institutions. This trend has been forecasted by such scholars as Bergquist (1994), and follows the trend of most state and municipal agencies, such as National Public Radio, which are increasingly independent.

This trend has a substantial impact on alumni relations and fund raising programs, calling on them to be more effective and productive, with less attention on developing affinity and more attention on generating income. Fund raising has a substantial role in the overall mixture of revenue generation for an institution, and serious attention must be afforded those individuals responsible for both cultivation and solicitation of donors.

Fund raising priorities are naturally interrelated to divisional planning, but perhaps more importantly, provide the foundation for a program's overall success or failure. Fund raising in higher education is no longer optional; it is an imperative to be embraced by every administrator, form academic and student affairs to business operations and systems managers. These fund raising priorities have become something to be learned, and often graduate students and emerging professionals find success in a career based upon their abilities to interact with potential donors.

This new reliance on fund raising gives rise to the institutional span of control consideration between alumni affairs and fund raising officers. The primary difference typically identified is that alumni offices work to provide an outlet for alumni involvement in such areas a curriculum, program objectives, admissions and recruitment,

campus life, etc. An additional dimension is the cultivation role alumni offices lay in raising money for the institution.

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The alumni affairs administrator role is changing, however, as alumni support and satisfaction fulfill a more important purpose on campus than in previous decades. Alumni officers serve as a fulcrum, providing alumni input to campus service and curricular relevancy, both vital in describing campus effects to measure quality and effectiveness. The alumni office leader surveys alumni interests and needs, and often conveys alumni interests to other campus leadership.

Often interpreted as a first among equals or alumnus taking a turn in service to the institution, alumni affairs leaders are distinctly different from their fund raising counter parts. Fund raising executives rely on a host of protections for the solicitation and receipt of financial instruments, while alumni affairs administrators focus attention on the management of voluntary human labor capital. The difference, particularly in terms of legal liability issues, are many.

Alumni affairs officers, as agents of their respective institutions, have an increasing need to study, become knowledgeable, and operationally proficient in the use of preventative legal measures. Colleges and universities in general are finding that

preventative measures can prove valuable from a both reputation and fiscal perspective. Those working with volunteers and external college constituents in specific have found that preventative legal management can significantly reduce institutional litigation and subsequent damage.

The current discussion was developed to outline the primary legal considerations affecting the alumni affairs administrator. These considerations are drawn from existing legal arguments that typically impact the college or university. These arguments are particularly tied to the administrative function of the alumni affairs administrator, and that individual's relationship with non-paid volunteers.

Who Are Alumni Officers?

Alumni giving has been linked to a wide variety of factors, ranging from undergraduate involvement, and religious affiliation, to marital status and involvement as an alumnus (cite). In response to these differing motivations, the alumni leader plays a variety of roles related to volunteer management.

Similar to a department chair or faculty senate president, the alumni officer is responsible or accountable to two distinct and diverse bodies: the population of institutional alumni and the college administrators who rely on alumni affairs officer. The alumni body expects the chief alumni officer to place their concerns, while simultaneously working to create new avenues for alumni participation in such areas as curriculum revisions, program reviews, and institutional quality or effectiveness. Senior institutional administrators, however, may anticipate that the alumni officer is first and foremost a senior administrator concerned with the internal welfare of the institution.

These demands can be both challenging and frustrating for the alumni affairs leaders, and can be a major determining factor in deciding how the work and direction of the office should be undertaken.

Alumni affairs administrators have been identified as a highly educated group of professionals who progress through positions in alumni affairs to more advanced positions.

Contemporary Issues in Advancement

Psychology of Giving: People give their time and money for many different reasons. Some have argued that the fund raising community arose from the demands placed on individuals by market economics and democratic politics. That is, some form of centralized authority, such as college president's office or state government, does not respond to individual needs, and individual people become activists for change by giving (Marts, 1966; see also Bila, 1991 and Parsons, 1998)).

The psychology of donors has been classified into virtually every possible framework. Popular rationale conceptualizations of donors include need-based responses (Lord, 1984), the economic benefits of giving (Leslie & Ramey, 1985), a history of involvement (Miller & Casebeer, 1991), and involvement intensity (1971; Parsons, 1998), and ownership, responsibility, and influence in decision making (Parsons, 1998).

Fund Raising Systems: As Rowland (1977) alluded to over 20 years ago, the process of raising money is more about aligning potential donor needs and interests with an overall perspective on organization planning. Raising money needs to be integrated into the overall system of setting priorities, planning beyond the immediate time, and

making an effort to evaluate or assess the program for criteria that is mutually developed between front-line and senior administrators.

An obvious extension of this is a method of constituent relations that addresses all potential donors, not just alumni, and makes use of tools that recognize individual differences and values each individuals. Stuhr (1985) stressed this articulation of institutional aims, forming a development program, recruiting, training, and serving volunteers, identifying, cultivating, and soliciting major gifts, and the professional development of staff members.

A similar system was proposed by Miller and Newman (1993) in which volunteers, donors, and potential donors are placed in a "communication loop. This loop, comprised a series of communication encounters where the organization has the potential to convey messages to the volunteers and donors, simultaneously provides opportunities for volunteer and donor input.

Fund Raising Professional: The fund raising professional has received a great deal of attention in literature, from the perspective of scholars, practitioners, and often, search firms. This attention has described personal and professional characteristics, and more often than not, includes grocery lists of characteristics or attributes (Burdette, 1987; Bila, 1991). Increasingly, though, the trend that Durino (1994) observed of approximately half of fund raising professionals are equally committed to the profession of fund raising and the organization which employs them may be reversing. Although fund raising skills are critical to success, alternative criteria for assessing fund raising effectiveness allows for the rewarding of more passionate work rather than 'hired guns' (see Bila, 1991).

Endow Everything: National and regional liberal arts colleges led the initiative to allow for naming every building and classroom on campus through endowments, and this trend has become common throughout higher education. In athletics, programs such as Southern California's illustrate how effectively donors can be cultivated to give through the naming of scholarships for athletes. At many institutions, divisions of student affairs have also become actively involved to capitalize on the involvement and feelings of affinity developed throughout the collegiate experience. Colleges and universities today allow for the endowing of deans of students positions, fellowships for graduate students, concert and speaker series, and residence facilities. By emphasizing endowments, the immediacy of fund raising is at least tempered, if not more rationale and purposive in its approach.

No More Prospects: The idea of a prospect was once the common currency in fund raising, but increasing competition for philanthropic dollars has redefined the relationship between an organization and donor. The idea of potential donors rather than prospects alludes to a greater level of respect and appreciation. Letters and materials must be personalized beyond a mailing address, and include reference to individual concerns.

Preventative Legal Considerations

In this contemporary framework for fund raising and alumni relations, the alumni affairs administrators and development officer are placed in a challenging legal situation. There are several legal considerations that these administrators must take into

consideration and, similarly, institutions must make every effort to provide information on these legal constructs to their employees.

Contract Law: In *Pima v. State of Arizona*, the court held that an oral contract can and will supersede a written contract, and that often no witnesses are needed to enforce these contracts. In the case of a breach of contract, the court will be directed to look at the terms of the contract. This means that it is wise for the alumni and development officers to instruct their volunteers to make no oral contracts. Similarly, an institution can be bound by an oral contract of the institutional advancement officer. Examples of these instances might be a volunteer ensuring an alumnus alumnus of a child's admission to college or that advanced placement courses will be credited toward the core curriculum.

Law of Agency: An agent of the institution, such as an alumni officer or an alumni volunteer, can bind the principal, meaning the institution. The individual does not have to be an actual agent of the institution, but can bind the institution if they present themselves as an apparent or believable agent of the institution. This similarly applies to alumni volunteers who may hold a leadership position and can subsequently bind the association, institution, or office. Special efforts should be made to train all volunteers and other possible agents (such as secretaries) to reduce personal and professional liability. Examples might include an apparent agent of the organization violating the Americans with Disabilities Act by making comments about performance ability or harassing an individual of the opposite gender. These apparent agents may also bind the institution for admissions decisions or in the naming of buildings or scholarship funds.

ADA Compliance: The Americans with Disabilities Act was signed into law in 1990, and requires for the protection of: disabled (one with a mental or physical impairment that substantially limits a major life function, a history of such, or perceived as such; association with a disabled person is also protected); known disabled (disability is made known to an employer by inquiry notice – request for accommodations, or constructive notice – employer should know by notice of a possible disability in a job related area); and qualified (a person with disability is qualified if the person can do the essential functions of a job with or without reasonable accommodation). The agent of the institution must comply with all facets of the law, including the specification and selection of individuals using essential functions, and where appropriate, reasonable accommodations.

Due Process: Typically only applicable in public colleges, all students, faculty, staff professional personnel, and volunteers are to be afforded due process. Due process is to be provided to all who have a property or liberty interest in the organization. Due process relates to the concept of fairness, and is divided into two domains: substantive and procedural. Substantive due process requires that the rules for hearings, termination, hiring, and so forth are fair, while procedural due process incorporates the fairness of the way rules are implemented (notice, hearing, and explanation). In questions of due process, the burden of proof is shifted to the defendant, and in U. S. federal court, the penalties can be money plus injunctions, but in state court, there may be no monetary awards (according to state law) outside of attorney fees, court costs, etc.

Harassment: Although commonly accepted that all types of harassment are incompatible with proper conduct, the concept is often mis-defined or interpreted.

Harassment is judged by *a reasonable person standard* considering the perspective of the recipient, including the creation of a hostile work environment due to gender, race, age, national origin, state origin, religion, or disability. The best response to an unwelcome word or act is simply "I am uncomfortable with that, would you please not repeat it." If the word or act does not stop, it should be reported immediately. In these situations, an employer or agency can be held responsible, and as such, an alumni association or development officer can be held accountable for the acts of both professional and volunteer staff. The alumni association or development office should make every effort to inform, educate, and clarify that harassing behavior will not be tolerated in any form.

Discussion

This brief overview of legal considerations for the alumni and development officer is an excellent discussion stimulus for institutional advancement staffs and volunteer corps. Although preventative law is increasingly important for the college administrators, surprisingly little attention has been directed at it in the mainstream of higher education literature, relying on legal professionals to expand the knowledge base within their own academic and professional domains. Some national associations, such as the National Association of Student Personnel Administrators, have made strides to share legal concerns related to college students, but even this has not fully embraced the tenets of preventative law.

The higher education environment fully accepts that fund raising and alumni activities are a part of their structure and philosophical nature, and introductory discussions such as this must become more commonplace for alumni and development

personnel. The empowering of volunteers certainly plays a role in the cultivation of current and potential donors, but this must also be done with caution. The temptation is to involve alumni directly out of their collegiate experience, and often these younger, entry level professionals may be overly ambitious in working with groups of alumni. Similarly, mid-career alumni who may view an alumni association as a mechanism for career enhancement may be ambitious in dealing with others, resulting in unfulfilled or ill-made promises. Contemporary society no longer allows for trial and error in areas of the law, and institutions which have to live and breathe by advancement activities must be cautious in how their charges advance their institutions.

From the perspective of both practitioners and scholars, the arguments related to alumni officer legal liability need to be more fully researched, identified, applied, and argued. This preliminary brief is an important first-step in understanding what professional advancement officers and volunteers need to be aware of, and continuing education programs and volunteer education programs need to make a concerted effort at deleting unnecessary risk from the association and institution.

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